Laidlaw Transit, Inc. *and* Rhode Island Laborers' District Council on behalf of its affiliated Local Union 15. Cases 34–CA–5482 and 34–CA–5770

August 25, 1995

DECISION AND ORDER

BY MEMBER STEPHENS, COHEN, AND TRUESDALE

On March 26, 1993, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed exceptions, a supporting brief, and a response to the General Counsel's exceptions.

The Board has considered the record in light of the exceptions and brief and has decided to adopt the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order of the administrative law judge to the extent consistent with this Decision and Order.

*ERR14*The General Counsel excepted to the judge's failure to make a specific conclusion of law that the Respondent violated Section 8(a)(1) and (3) of the Act by discriminatorily utilizing nonunion employees to drive with more frequency, instead of making job offers to North Stonington drivers. We find merit to this exception. The judge found that credible evidence showed that the Respondent engaged in this discriminatory practice. We agree and we will therefore add this conclusion of law, and grant appropriate relief.

We adopt the judge's finding that the Respondent lawfully maintained two seniority lists, one at the Stonington terminal and one at the North Stonington terminal. However, we agree with the General Counsel's contention that the judge erred in failing to distinguish between employees' ''longevity'' status and their ''seniority'' status. Undisputed record evidence shows that, according to established practice, longevity was calculated on the basis of a driver's years of service with the Employer, whereas seniority was calculated solely on the basis of service at a particular terminal. Longevity, unlike seniority, was transferable whenever a driver moved from one terminal to another. Although seniority affected such matters as bumping rights, longevity was used to calculate wages and benefits. We therefore find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to appropriately take account of longevity in calculating the pay and benefits of reinstated North Stonington drivers, without having given the Union notice and an opportunity for bargaining over a change in the longevity method for determining wages and benefits. We will leave to compliance the determination of which employees suffered losses because of this violation and the amounts involved.

AMENDED CONCLUSIONS OF LAW

Insert the following as Conclusions of Law 4 and 5 and renumber subsequent conclusions accordingly:

''4. By using nonunit employees as drivers to avoid making job offers to North Stonington drivers, the Respondent has violated Section 8(a)(1) and (3) of the Act.''

''5. By failing to take account of longevity in calculating the pay and benefits of reinstated North Stonington drivers without giving the Union notice and an opportunity to bargain over this change in the method of determining wages and benefits, the Respondent has violated Section 8(a)(5) and (1) of the Act.''

ORDER

The National Labor Relations Board orders that the Respondent, Laidlaw Transit, Inc., Stonington and North Stonington, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, disciplining, or taking away work from any employees because of their membership in or activities on behalf of the Union.

(b) Withholding annual wage increases because its employees selected the Union as their collective-bargaining representative.

(c) Refusing to recall or rehire, or delaying the recall or rehire of, employees because of their union membership or activities.

(d) Utilizing nonunit employees as drivers in order to avoid making job offers to the North Stonington drivers.

(e) Bargaining in bad faith by soliciting employee grievances or bypassing the employees' elected bargaining representative by attempting to deal directly with the employees.

(f) Bargaining in bad faith by withdrawing a contract offer on its acceptance by the Union.

(g) Unilaterally changing terms and conditions or employment by withholding annual wage increases or by changing the charter bid system without notifying the Union or giving it an opportunity to bargain about such changes.

(h) Failing to pay reinstated North Stonington drivers according to longevity without bargaining with the Union over changes in the longevity formula.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge inadvertently failed to give a make-whole order for the discrimination found concerning Lori Bailey. We correct this error.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time drivers and monitors employed by the Employer at its Stonington and North Stonington, Connecticut facilities; but excluding all other employees, office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

(b) Offer Doreen Aymelek immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of this decision.

(c) Offer to the employees who were laid off from the North Stonington facility in June 1991 immediate employment or employment in accordance with a preferential hiring list, in the manner described in the remedy section of this decision, and make them whole as may be appropriately determined at the compliance stage of this proceeding.

(d) Make whole the employees who were not given annual wage increases that were withheld for the 1991–1992 school season and returned employees who were not paid according to their longevity in employment.

(e) Return to the system of awarding bids for charter runs in the late afternoon instead of at about noon.

(f) Remove from its files any references to the unlawful discharge of Doreen Aymelek and the warnings issued to Jane Bailey and Cindy Greene in April 1992, and notify them in writing that this has been done and that these actions will not be used against them in any way.

(g) Post at its facility in Stonington, Connecticut, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 34 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the certification year be extended for 6 months.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge, discipline, or take work away from any employees because of their membership in or activities on behalf of Rhode Island Laborers' District Council on behalf of its affiliated Local Union 15.

WE WILL NOT withhold annual wage increases because our employees selected the Union as their collective-bargaining representative.

WE WILL NOT refuse to recall or rehire, or delay the recall or rehire of, employees because of their union membership or activities.

WE WILL NOT use nonunit employees as drivers in order to avoid making job offers to the North Stonington drivers.

WE WILL NOT fail to pay reinstated North Stonington drivers according to their longevity of employment without bargaining with the Union over changes in the longevity formula.

WE WILL NOT bargain in bad faith by soliciting employee grievances or bypassing our employees' elected bargaining representative by attempting to deal directly with our employees.

WE WILL NOT bargain in bad faith by withdrawing a contract offer on its acceptance by the Union.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL NOT unilaterally change terms and conditions of employment by withholding annual wage increases or by changing the charter bid system without notifying the Union or giving it an opportunity to bargain about such changes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time drivers and monitors employed by the Employer at its Stonington and North Stonington, Connecticut facilities; but excluding all other employees, office clerical employees and all guards, professional employees and supervisors as defined in the Act.

WE WILL offer Doreen Aymelek immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of her discharge.

WE WILL make whole Lori Bailey from January 9, 1991, until employment was offered to her in July 1991, for any loss of earnings and benefits she may have suffered as a result of the delay in recalling or rehiring her, with interest.

WE WILL offer to the employees who were laid off from the North Stonington facility in June 1991 immediate employment or employment in accordance with a preferential hiring list, and make them whole for any loss of earnings and benefits that they may have suffered because they were not recalled or rehired.

WE WILL remove from our files any references to the discharge of Doreen Aymelek and the warnings issued to Jane Bailey and Cindy Greene in April 1992, and notify them in writing that this has been done and that these actions will not be used against them in any way.

WE WILL make whole the employees who were not given annual wage increases that were withheld for the 1991–1992 school season, and employees who were not paid according to their longevity of employment.

WE WILL return to the system of awarding bids for charter runs in the late afternoon instead of at about noon.

LAIDLAW TRANSIT, INC.

William E. O'Conner, Esq., for the General Counsel.

Marjorie H. Gordon, Esq. and *Julius M. Steiner, Esq. (Obermayer, Rebmann, Maxwell & Hippel)*, for the Respondent.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Groton and Hartford, Connecticut, on various dates in August, September, and October 1992. The charge, first, second, and third amended charges in Case 34–CA–5482 were filed respectively on November 20 and December 24, 1991, and on January 9 and February 26, 1992. The charge in Case 34–CA–5770 was filed on July 15, 1992. The complaint in Case 34–CA–5482 was issued by the Regional Director on March 31, 1992, and the complaint in Case 34–CA–5770 was issued on August 11, 1992. In substance the complaints allege:

1. That since April 20, 1991, the Respondent has deprived Jane Bailey of opportunities to train other employees and thereby deprived her of an additional 30 cents per hour for such work.

2. That on or about June 10, 1991, the Respondent refused to award certain work to Doreen Aymelek, instead awarding it to a known antiunion employee (Regina Martin) and that in June 1991, Aymelek was removed from another assignment which was then awarded to Martin.

3. That in September 1991, the Respondent by its supervisor, Joyce Warrell, threatened employees with the loss of medical benefits.

4. That on or about September 3, 1991, the Respondent refused to grant annual wage increases to its employees.

5. That on or about September 3, 1991, the Respondent refused to allow an employee (Cathy Toth) to enroll in its medical plan.

6. That on or about September 3, 1991, the Respondent unilaterally changed the seniority status, wages, and benefits and refused to recall its employees previously laid off at its North Stonington facility.

7. That since on or about September 3, 1991, the Respondent assigned unit work to nonunit employees in order to avoid recalling or reinstating the North Stonington employees.

8. That the actions described in paragraphs 6 and 7 were done with discriminatory intent and without notifying or bargaining with the Union.

9. That on or about September 3, 1991, the Respondent without bargaining with the Union unilaterally increased the cost of medical benefits for its employees.

10. That on September 13, 1991, Respondent discriminatorily discharged Doreen Aymelek.

11. That in October 1991, the Respondent by Ted Hutcheson, its director of human resources, solicited employee grievances, promised increased benefits, and bypassed the Union by dealing directly with employees regarding terms and conditions of employment.

12. That the Respondent has bargained in bad faith with the Union during contract negotiations which ran from January 24, 1991, to March 31, 1992, and that Respondent evinced its intention to avoid reaching an agreement when, on November 16, 1991, it withdrew a contract offer on being notified that the Union would accept it.

13. That the Respondent on April 24 and 29, 1992, issued warnings respectively to Jane Bailey and Cindy Greene because of their union activities.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent is a Delaware corporation with its principal offices located in Canada. It is primarily engaged in providing schoolbus services and much of its business is obtained through the process of making bids to public and private school systems. At some of its other facilities located in Connecticut, the Respondent has collective-bargaining agreements with various labor organizations. It therefore is no stranger in dealing with unions.

The locations involved in the present case are Stonington and North Stonington Connecticut. Before 1986, there was a predecessor company called Beebee's which provided schoolbus services for these two school districts. Some of the present employees of the Respondent had been employed by Beebee's before that company was acquired by the Respondent.

The Respondent purchased Beebee's in August 1986 and hired that company's employees. They were not, at that time, represented by any labor organization. At the time of the takeover, the former employees of Beebee's became part of Laidlaw's Madison Connecticut Division which included over 500 employees. Later in 1988, the Madison Division, which encompassed most of Connecticut, was broken down for bookkeeping purposes into several smaller ''divisions.'' According to Edward LeClerc, the Stonington and North Stonington facilities became a single division for accounting purposes.[1]

When the operation was run by Beebee's, it appears that Beebee's considered North Stonington and Stonington to be separate divisions and maintained separate seniority lists for each location. Thus, Beebee's employee handbook described seniority as follows:

> 10. Seniority and Longevity
>
> The seniority list for each division is based on years of service at that division within the company. Longevity is based on years of service within the company regardless of the division worked in. Seniority is not transferable to another division, as is longevity.

The Respondent asserts that when it took over from Beebee's, it maintained the same seniority practice as its predecessor and accorded the former employees exactly the same seniority as they had there. This means, according to the Respondent, that it continued to treat Stonington and North Stonington drivers as being on separate seniority lists. In this respect, the Respondent asserts that it adopted, without change, the above-quoted seniority provision from Beebee's employee handbook and intended to maintain its meaning notwithstanding the fact that later in 1988, it treated Stonington and North Stonington as a single division for accounting purposes. That is, the Respondent argues that while treating Stonington and North Stonington as a single accounting division, it never intended to alter or modify the original practice of Beebee's in treating each facility as a separate ''division'' for purposes of seniority.

Before each school year the Company holds a driver's meeting. In late August 1990, the Company announced that for the upcoming school year there would be annual raises of 30 cents per hour. At the Stonington meeting, this was met with consternation as it appears that in previous years, the drivers had gotten 50-cent raises and therefore expected this to continue. The drivers at Stonington decided to engage in a strike and they in turn convinced most of the North Stonington drivers to join them. Simultaneously, the drivers delivered a set of demands on the Company which were signed by 39 employees.

Shortly after the strike began, Jane Bailey, who was the safety, training, and personnel (STP) supervisor, contacted the Union on behalf of the employees and most employees signed up.

On August 31, 1990, the Company sent a letter to the employees responding to the employees' demands and indicating its awareness of union activity. Among other things, it stated that ''if you decide to participate in any interruption of service you risk losing your current status regarding wages, benefits, and seniority.'' On September 5, 1990, Donald Hartley sent another letter to the employees urging them to return to work.

On September 14, 1990, the Union filed a petition in Case 34–RC–986 and an election was held on November 9, 1990. The vote was 35 to 6 in favor of union representation and on November 20, 1990, the Union was certified as the bargaining representative in a unit consisting of:

> All full-time and regular part-time drivers and monitors employed by the Employer at its Stonington and North Stonington, Connecticut facilities; but excluding all other employees, office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

B. *The Cast*

As noted above, the employee most instrumental in obtaining union representation was Jane Bailey. She had a daughter, Lori Bailey, who while active in the initial activity, left the Company before the election because she was having difficulty with her pregnancy. Two other employees, Cindy Greene and Donna Mayne, were very active for the Union,

[1] The Stonington facility consists of a garage, an office, and a place to keep buses. While people spoke of the North Stonington facility, that in reality is something of a misnomer as there is nothing in North Stonington except a place to park buses. Although there were drivers who were assigned to do regular runs in North Stonington, the operation there was essentially run from the Stonington facility.

each being selected as shop stewards. They, along with Jane Bailey, comprised the employee committee that participated in the collective-bargaining negotiations. Cindy Greene and Jane Bailey worked out of the Stonington Terminal and Donna Mayne worked out of North Stonington. These three were the most active employees on behalf of the Union, although Jane Bailey testified that other employees who openly expressed their support for the Union were Cathy Toth, Janet Rich, Sharon Fish, Karen Simmons, Doreen Aymelek, Denise Johnson, Lori Bailey, and Sandra Arnott.

The evidence showed that there were a number of employees who were actively opposed to the Union. Most significant among these were Marian Oates who filed a decertification petition on December 16, 1991, and Regina Martin who seems to have made it her business to tattletale on the union activists in an attempt to get them into trouble with management.

In the fall of 1990, Donald Hartley was the terminal manager and Nancy Hartley was the dispatcher. Jane Bailey was the safety, training, and personnel (STP) supervisor and she was assisted by Joyce Warrell who did most of the on-road training. They in turn reported to Ted LeClerc who was in charge of terminal operations for eastern Connecticut. When Jane Bailey relinquished her position as STP supervisor in early 1991, that position was taken over by Joyce Warrell. In April 1991, Donald Hartley left and Bob Bickford assumed the position of division manager which meant that he was directly in charge of three terminals including those at Stonington. He too reported to LeClerc.

When negotiations began in January 1991, the Company was represented by Philip Wolfenden and Ted LeClerc. The Union's chief spokesman was Manual Sousa.

In August 1991, the Company dispatched to the Stonington facility its director of human resources, Ted Hutcheson. It is alleged by the General Counsel, and denied by the Respondent, that Hutcheson sought to undermine the Union and the negotiations by soliciting grievances and by attempting to deal directly with employees regarding their terms and conditions of employment. It also was intimated by the General Counsel's witnesses, if not proven, that Hutcheson had something to do with the filing of the decertification petition noted above.

C. *The Negotiations*

After the Union was certified on November 20, 1990, negotiations did not begin until January 24, 1991. At the first meeting, Sousa requested a copy of the driver's handbook, the Company's medical plan, and a list of the drivers with their dates of hire and rates of pay. This information was subsequently provided. The Union made a contract and wage rate proposal. The parties, however, agreed to forego discussion of monetary items until they could resolve all nonmonetary issues first. The Company objected to the participation of Jane Bailey as part of the Union's negotiating committee contending that she was part of management.

Jane Bailey testified that she decided after consultation with the Union to give up her job as STP supervisor so that she could remain on the Union's negotiation team. She also testified that she talked to Ted LeClerc who assured her that even if she went back to being a driver, she would still be given opportunities to train others.

The second meeting took place on February 20, 1991. As the parties discussed the possibility that the Company might lose the North Stonington run if another Company underbid it,[2] Sousa stated that if that happened, layoffs within the unit should be on a seniority basis so that North Stonington drivers with higher seniority should be allowed to bump Stonington drivers with lower seniority. At the end of the meeting, the Company presented its contract proposals. This proposal omitted, however, any economic items such as wages, holidays, health insurance, or pension programs.

In the spring of 1991, all parties found out that the Company had not been successful in bidding for a new North Stonington contract. At that time, Donald Hartley notified the employees there that Eastern Bus Lines had been the successful bidder and that it was offering jobs to all of the North Stonington drivers.

On May 16, 1991, the fifth bargaining session was held. Sousa stated that the Union viewed the seniority issue as their highest priority and that they wanted the North Stonington drivers with higher seniority to have the right to bump Stonington drivers having less seniority. In effect, the Union was proposing that seniority be based on time within the bargaining unit as a whole.

On June 20, 1991, the Union continued to press for a single seniority list for the entire group of employees. When the Company would not agree, Sousa argued that the driver's handbook was consistent with his demand as it set forth seniority on a divisionwide basis and that North Stonington and Stonington were one division. Alternatively, the Union asked that the North Stonington drivers be put on a preferential list for hiring at the Stonington facility. The Respondent's response was noncommittal.

In August 1991, the Union held a meeting with the employees at which there was discussion about the possibility of a strike. It seems that Marian Oates, perhaps on this occasion, asked Sousa if the employees could lose their jobs if they engaged in a strike. Apparently, when Sousa said that strikers could not be fired but could be permanently replaced, this upset Oates who decided that the Union's representative was ''beating around the bush'' and not being forthright. She testified that it was this response (which correctly describes the law relating to economic strikers) that led her to begin thinking about getting rid of the Union.

On August 16, 1991, the Union mailed a revised contract proposal to the Company. The forwarding letter stated:

> Enclosed please find the Union's proposal concerning the above negotiations.
>
> In addition, please be advised that the Union will accept all non-monetary items listed in Laidlaw's proposal and is prepared to discuss all monetary items at a meeting prior to September 1, 1991 if the parties can arrange same.

In August 1991, at the annual drivers' meeting, the Company introduced Ted Hutcheson to the drivers who were told that he would update them about the negotiations. They also were told that if they had any problems they could speak to

[2] By letter dated January 26, 1991, the Company notified the Union that the North Stonington contract had been put up for bid and that its bid was substantially higher than that of another contractor.

Hutcheson. When asked about raises, Hutcheson or Ted LeClerc told the employees that there would be no raises that year as this was part of the negotiations. Hutcheson told employees that the Company had been trying without success to contact the Union over the summer regarding negotiations. When employee Valerie Cline-Collins asked how they could get rid of the Union, he told her that she should contact the NLRB.

In late September 1991, Hutcheson returned to the facility and told the employees that the Union and the Company were trying to set up a negotiation session. After the meeting, Marian Oates met with Hutcheson and told him that Valerie Cline-Collins was serious about a group of people that wanted to decertify the Union. Hutcheson testified that he told her to contact the NLRB.

On or about October 4, 1991, Hutcheson in response to a request from Sharon Fish (a union supporter) came to the facility to talk to a group of employees which included Jane Bailey and Cindy Greene. It seems that much of the discussion at this meeting reflected the concern of some drivers that others were not following company safety rules about putting their children in safety seats while driving the schoolbuses. (The concern was that such infractions by some drivers might jeopardize the right of the remainder to bring their young children along when they drove the buses.) After the meeting, Hutcheson told Bickford about the complaint and the Company, on October 11, 1991, notified all drivers of the existing policy requiring the use safety seats on the buses.

At the bargaining session held on October 9, 1991, the Union asked the Company to place the North Stonington drivers on a preferential hiring list for the Stonington facility and to hire them as jobs opened up. Wolfenden said that they should submit new job applications.

On October 11, 1991, Hutcheson sent a memo to the employes of Stonington as follows:

> In response to an invitation by you folks to participate in an employee discussion regarding the advancement of employee/employer relations I will be at the Stonington Terminal on Wednesday October 16, 1991 at 12:30 p.m. to discuss issues with employees. You will be advised on the location prior to October 16, 1991. If we need more time to thoroughly talk out the issues, I will be available later on that afternoon as well to talk individually or collectively with you folks.

On October 16, 1991, Hutcheson met with employees at the Stonington Community Center where, among other things, he spoke to them about the Company's policy regarding the assignment of charters. Many employees wanted a rotating system for the assignment of charters. When Jane Bailey arrived, she told Hutcheson that he should not be discussing this issue with the employees as it was one of the items being discussed in the contract negotiations.

On October 17, 1991, another bargaining session was held and the Union repeated its demand that the Employer place the North Stonington drivers on a preferential hiring list for the Stonington facility.

On October 25, 1991, the Company sent a second contract proposal to the Union. This contained *no* economic proposals. Thus, notwithstanding the fact that the certification year had less than 1 month to run, and the Union's request to bargain about economic issues, the Company's proposal at this time, insofar as wages, pension and health benefits, and holidays was; ''Monetary item to be discussed later.''

On October 29, 1991, the Company sent a letter to the Union indicating that it was changing its charter distribution policy. This letter stated:

> At a recent drivers meeting a lengthy discussion was held pertaining to the present system for assigning drivers to charters. The present policy distributes charters based only on seniority. There is no provision in the present policy to allow for rotation through the entire driver list.
>
> At this time we intend to change the policy pertaining to charter assignments at the Stonington terminal to a rotation system based on a seniority list. This change is a result of the drivers meeting held on October 16, 1991. This change in policy will be effective November 8, 1991 unless I hear from you before that date.

At the same time, the Company posted a notice informing the drivers of this change in policy. At a meeting in the terminal on October 30, 1991, Jane Bailey asked Hutcheson how the Company could make this change as it was part of the negotiations. When Hutcheson replied that many of the drivers wanted the change, Bailey asked: ''You're telling me that if 31 drivers come in here this afternoon and tell you they want a raise you'll give it them?'' Soon after this meeting, Bickford rescinded the proposed change and it never went into effect. (I suspect this was done pursuant to advice of counsel.)

On November 11, 1991, Hutcheson sent the following memorandum to employees:

> That you again for the opportunity to discuss work issues with you. I appreciate your candor and I look forward as you do, returning the Stonington terminal to a friendlier family atmosphere where employees and management are co-operative and trusting of one another.
>
> Several employees have formally indicated to me directly that they no longer support union representation. Many of these employes stated they knew of others who wished to express withdrawal of support for the union but indicated they didn't want to formalize their intentions because in their opinion they would be subject of intimidation or threats from the union.
>
> Please be advised that the Company will not tolerate threats, intimidation or coercion of any kind whatsoever made against an employee of Laidlaw. Laidlaw can and will to the utmost extent legally protect Laidlaw employees; in exercising their rights to choose for or against union representation.

On November 19, 1991, another bargaining session was held and it is noted that this was 1 day short of the 1-year period following the Union's certification.[3] The Company

[3] After winning an NLRB election, a union is entitled to an irrebutable presumption that it represents a majority of the bargaining unit employees for 1 year after being certified. That is, the

proposed that as far as monetary issues were concerned, there should be a 2-year freeze on everything. At this point, Union Representative Sousa told the employee committee that he thought they should accept the Company's entire proposal because any contract was better than none at all. Sousa also told them that he doubted that the Company would agree because he didn't think that it was serious about obtaining a contract. The credited testimony of Sousa and his assistant, Vinnie Masino, was that they thereupon entered the room where the company negotiators were sitting and told them that the Union would accept the Company's offer in toto. I believe their testimony that Wolfenden responded by stating; ''What proposal? There is no proposal.''

Although a company (or union) may engage in hard bargaining, Section 8(a)(5) still requires it to bargain in good faith, which basically is defined as a willingness to enter into a contract. *NLRB v. Insurance Agents' International Union*, 361 U.S. 477 (1960). Even though it is permissible for a company to use its relative strength vis-a-vis a union to press for contract terms favorable to itself, it may not use its strength to engage in futile or sham negotiations with no intention of ever reaching an agreement. *NLRB v. Herman Sausage Co*., 275 F.2d 229, 232, (5th Cir. 1960). The Board stated in *Abingdon Nursing Center*, 197 NLRB 781, 787 (1972):

> Good faith, or want of it, is concerned essentially with a state of mind. . . . That determination must be based upon reasonable inference drawn from the totality of conduct evidencing the state of mind with which the employer entered into and participated in the bargaining process. . . . All aspects of the Respondent's bargaining and related conduct must be considered in unity, not as separate fragments each to be assessed in isolation.

As of November 19, 1991, the Company, despite being aware that some employees were preparing an attempt to decertify the Union, still had an absolute obligation to bargain in good faith with the Union because the certification year had not yet expired. *Ray Brooks v. NLRB*, supra. This meant that if the Company made an offer which was accepted by the Union, it would be obliged to agree to that acceptance and enter into a contract. In my opinion, the Company at least as of November 19, 1991, had no intention of entering into a contract even if meant agreeing to the Union's complete capitulation to the Company's proposed terms. Instead, it is my opinion, that the Company was intent on waiting for the certification year to expire with the hope that the Union would be decertified. I have credited the testimony of Sousa and Masino as to their version of the events of that day and I find that the Company in this respect violated Section 8(a)(1) and (5) of the Act. See *Mead Corp*., 256 NLRB 686 (1981), where the Board held that the company violated Section 8(a)(5) when, during midterm negotiations, it withdrew a contract proposal at a time when the company knew that the union's acceptance was imminent.

company must bargain with the Union during the ''Certification Year'' notwithstanding any claim by anyone that the union may have lost its majority status. *Ray Brooks v. NLRB* 348 U.S. 96 (1954).

Additionally, I think that the facts described above, show that in September and October 1991, while negotiations were ongoing, Ted Hutcheson solicited employee grievances and attempted to deal directly with employees regarding the subject of charter assignments which was a matter being discussed in collective bargaining. In this respect too, I conclude that the Company violated Section 8(a)(1) and (5) of the Act. *Uarco Inc*., 216 NLRB 1 (1974); *Genzer Tool & Die Corp*., 268 NLRB 330 (1983).

D. *The Alleged Failure to Recall or Rehire North Stonington Employees*

The General Counsel alleges that the Company violated the Act by failing to transfer, recall, or rehire the employees who were laid off from North Stonington in June 1991 after the Company was the unsuccessful bidder for that contract.[4] As I understand it, the General Counsel posits two separate theories. One that there was in fact unified seniority for the two terminals and that by failing to transfer the North Stonington drivers into the Stonington terminal, bumping if necessary less senior drivers, the Company unilaterally changed existing terms and conditions of employment and thereby violated Section 8(a)(1) and (5) of the Act. The second alternative theory is that the Company, for discriminatory reasons, did not recall or rehire the North Stonington drivers as jobs became available at the Stonington facility. Under this theory, it is postulated that the Company was motivated by a desire to eliminate from its payroll those drivers who had supported the Union during the preceding election campaign and replace them by hiring new drivers who were not involved in bringing in the Union.

In my opinion, the General Counsel's first theory is not supported by the evidence. It is true that the driver's handbook states that seniority is to be on a divisionwide basis. That provision in the handbook however was originally written when the Company was owned by Beebee's and was understood to mean that there were two separate seniority lists for that Company's two divisions which consisted of Stonington and North Stonington. It is also true that at some point after the Respondent purchased these operations it merged the Stonington and North Stonington operations into a single division for bookkeeping purposes. I however do not think that the Respondent intended to alter the past practice of treating the two locations as separate entities for seniority

[4] G.C. Exh. 50 which is the last seniority list for North Stonington lists 13 drivers at that location. They were:

Name	*Hire Date*
Floyd Azamarski	19–1–83
Joyce Curtis	19–12–83
Judy Knight	10–17–83
Donna Mayne	13–1–82
Kathy Coco	9–3–86
Sharon Lewis	5–8–87
Sandra White	11–18–88
Beth Arzamarski	9–13–89
Karen Coon	9–27–89
Barbara Dawley	1–5–90
Agnela Fitzpatrick	8–29–90
Patty Stott	8–29–90
Lorna Siwinski	1–31–91

It appears that the successful bidder, Eastern Bus Lines, offered jobs to all of the drivers who worked at at North Stonington. Some, however, such as Donna Mayne and Judy Knight, did not go to work for Eastern.

purposes. In this respect, I believe that the Company neglected to change the language in the driver's handbook because it did not anticipate or realize that a claim would later be made that it had merged the two facilities for seniority purposes. Indeed, it is apparent that the Union's negotiators were of the opinion that there was separate seniority for each location because they pressed the Company at the negotiations to merge seniority. Such a demand obviously would not have been made if it was understood by either party that there was an existing practice of having a unified seniority list for both locations.

Given my conclusion that the prevailing practice was that each terminal had its own seniority, I cannot find that the Company's failure to transfer the North Stonington drivers to the Stonington facility in order of overall seniority, constituted a unilateral change.

On the other hand, I am persuaded of the validity of the General Counsel's second theory and I conclude that the Company either refused to rehire or delayed the rehire of North Stonington drivers for discriminatory reasons.

The main reason given by the Company for not offering employment to some of the North Stonington drivers at the Stonington facility is that they did not fill out job applications. As to others, such as Donna Mayne and Judy Knight, who were offered employment later in 1992, the Respondent contends that they filled out job applications after other people and therefore were offered jobs in the order that applications were submitted.

It became apparent by late January 1991 that there was a real possibility that the Company would not retain the North Stonington runs because another company had put in a lower bid with the school board. When the drivers were notified that the Company had not been successful in its bid, the Union, at the May 16, 1991 negotiation session, stated that its highest priority was to have the North Stonington drivers be able to transfer to the Stonington facility in order of overall seniority. The Union continued to press for overall seniority at the June 20 negotiation session. And after the North Stonington drivers were laid off and the negotiations resumed in September 1991, the Union demanded that if the Company would not agree to overall seniority it should at least put the North Stonington drivers on a preferential hiring list for the Stonington terminal. The point is that the Union was making it plain to the Company before and after the North Stonington drivers had been laid off that these drivers, as a group, were interested in retaining their jobs with the Company and desired to move to the Stonington facility if possible.[5]

Preliminarily, it is noted that schoolbus drivers are required to have a commercial driving license sometimes referred to here as a CDL. For the school year 1991–1992, the State of Connecticut required additional training. Newly hired drivers without prior experience, and without a CDL, had to be given extensive training which entails both classroom and behind the wheel training. It is estimated that such a new employee would require about 35 to 37 hours of training and would cost the Company anywhere from about $600 to $1000 per employee. On the other hand, a driver who had worked at North Stonington during the 1990–1991 school year would already have had a license. She nevertheless would have been required to meet some newly mandated requirements but this would entail much less training than required of a new employee.

It is noted that new persons are not actually hired by the Company until after his/her training has been completed and after they have obtained the necessary license. Donald Hartley testified to the obvious; namely, that the Company preferred to hire a former employee who had quit than someone from off the street. By the same token, it seems obvious to me that it would be preferable to rehire a previously laid-off driver who had been a satisfactory employee than any new person who had neither a license nor driving experience.

Judy Knight testified that in August 1991 she called the Company and spoke to Joyce Warrell about being employed. She states that Warrell told her that she (Knight) would have to come down and fill out a new application. When Knight said that she had worked for the Company for 8 years and didn't feel it was necessary to fill out a new application, Warrell told her it didn't make any difference. Knight did not fill out a new application at that time.

Donna Mayne, a union shop steward and member of the Union's negotiating committee, testified that on August 28, 1991, she visited the Company's office and filled out a job application, not having heard from the Company before that time. She states that she spoke to Joyce Warrell and was told that the Company had three new runs. Mayne testified that Warrell told her that the Company had a new driver in training; that it had rehired a former employee named Arthur Henson (who was not employed in the previous school year), and that the only North Stonington driver who had filled out an application was Sandy White. (White filled out an application on August 26, 1991.) According to Donna Mayne, Warrell told her that she would be considered for the next job opening after Sandy White.

The evidence shows that the Company did not notify any of the North Stonington drivers who had been laid off, of job openings. Instead, in August 1991, it hired Arthur Henson, who as noted above, had previously been employed by the Company some years before and it also rehired Sandy White. (White, who had been employed at North Stonington during the 1990–1991 school year, did not participate in the strike that had taken place during the previous September).[6] Also in August 1991, Joyce Warrell began to train a new person, Ruth Eastty, who had walked in ''off the street,'' and who neither had a CDL nor any prior experience. Indeed, the Company continued to train and retain Eastty after she failed the licensing test and despite the fact that Donna Mayne, an experienced North Stonington driver, was actively applying for a job.

Prior to the start of the 1991–1992 season, drivers Patrick Matson, Debbie McIntire, Laurie Barber, and Holly Perez either quit or failed to show up. Before the school year began, Arthur Henson and Sandra White were hired and Ruth Eastty, although not hired, was put into training. (Eastty was

[5] Donald Hartley testified that many of the North Stonington drivers were ''bummed out'' about the idea of going to work for Eastern which was the successful bidder. He testified that none of the drivers said that they did not want to work for Laidlaw if jobs were offered to them at other locations.

[6] Henson had a weight problem which required the Company to modify the driver's seat of a bus in order for him to perform his job. Otherwise, there is no indication that he could not do his job. After being employed, he expressed his opposition to the Union.

eventually hired when she got her license and she was given a regular run.)

Soon after the school year started there was further attrition. Marilyn McKenna quit in early September, Doreen Aymelek was fired on September 13, 1991, and Donna Victoria went out on workmen's compensation on or about October 4, 1991, and never returned. Additionally, in early October 1991, Regina Martin went out for a time on disability, and in January 1992 Jody Root was fired.

Nancy Hartley testified that Donna Mayne asked about a job in September 1991 after Marilyn McKenna quit and again after Doreen Aymelek was fired. Hartley states that she told Mayne on each occasion that the Company was not hiring. In fact, the Company did not offer a job to Donna Mayne until January 1992, after Jody Root was fired at which time it also offered a job to another new person named Diane Joseph. Further, the evidence shows that the Company, after January 1992, hired other new unlicensed drivers such as Paul Desy and Susan Cozzolino before making employment offers to any of the other North Stonington drivers such as Judy Knight who had explicitly expressed an interest in working as early as August 1991 and who filled out a job application on January 21, 1992. (Knight was subsequently offered a job at the Stonington facility in March 1992 but turned it down because at that time she was taking care of her grandchild.)[7]

There also was credible evidence that instead of making job offers to North Stonington drivers, at least to the extent that drivers were needed to cover all runs, the Respondent utilized other personnel such as mechanics, supervisors, and employees from other terminals with more frequency than in the past.

Pursuant to *Wright Line*, 251 NLRB 1083 (1980), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983), once the General Counsel makes out a prima facie showing sufficient to support an inference that protected or union activity was a motivating factor in the decision to discharge, refuse to hire, or take other adverse action against an employee, the burden shifts to the respondent to demonstrate that it would have taken the same action in the absence of the protected activity.

In the present case, I think that the evidence supports a contention that the General Counsel has made a prima facie showing that a motivating reason for not offering jobs to at least some of the North Stonington drivers was because they, like most of the other drivers, voted for the Union in the election and, with the exception of Sandy White, engaged in the work stoppage that occurred during the preceding year.

Respondent's argument that it did not offer jobs to these people because they either did not file applications or filed applications too late is not persuasive.

The purpose of a job application is twofold; first to ascertain whether an individual wants to work for a company and second to give information so that an employer may judge the applicant's qualifications. In the present case, the Employer was well aware that the employees at North Stonington including Donna Mayne and Judy Knight were interested in working for Laidlaw because the Union as their representative had made this crystal clear at the negotiations. Second, as the North Stonington drivers had recently worked for the Company, the Respondent was fully aware of their qualifications and in fact it made no suggestion or contention that any of these drivers were not qualified for these jobs. Moreover, as shown above, *all* of the North Stonington drivers were more qualified than the people (with perhaps the exception of Arthur Henson), who were trained and hired in September 1991 and January 1992. That is, the new employees such as Eastty, Joseph, Desy, and Cozzolino, all of whom were offered jobs ahead of North Stonington drivers, had neither driven schoolbuses before nor had the requisite licenses to do so. These new drivers all required extensive and expensive training which would have been saved had the Company offered the jobs to the North Stonington drivers who had been laid off in June 1991.

E. *Lori Bailey*

As noted above, Lori Bailey was one of the drivers who initiated the original strike. She also is the daughter of Jane Bailey, the leading union activist. After the strike, and before the election, Lori Bailey left the Company in October 1990 because of her pregnancy. There is a difference of opinion as to whether she indicated to Donald Hartley that she would return after her pregnancy and the Company asserts that she merely indicated that she was quitting. Most likely, she told Donald Hartley that she was leaving because of her pregnancy and that she and Hartley later honestly disagreed as to whether she was given ''pregnancy leave.''[8] In either event, I don't think that this makes any difference to the outcome of this case.

Lori Bailey testified that on January 9, 1992, she went to the office and told Nancy Hartley that she was ready to return to work. On January 16, 1992, she returned to the terminal and was told by Nancy Hartley that she would have to fill out a new application. When Bailey asked why, Hartley said that it was to update the files. Bailey asked if they needed drivers and Hartley said that they would like to hire six drivers and were putting advertisements in the local newspapers. According to Lori Bailey, Joyce Warrell asked her where she stood with the new CDL requirements and she (Bailey) said that all she needed was a late proficiency test which required only a couple of hours on the road. Bailey was told by Warrell that she would talk to Bickford and get back to her.

On January 22, 1992, Lori Bailey called the office and was told by Nancy Hartley that Bob Bickford would call her. Bailey testified that on January 23, Bickford called her and said that he wanted to wait until the ad ran out on the following Monday. She states that she asked if she was being treated like a new applicant and was told that she was.

According to Bailey, she called on January 28, 1992, and was told by Joyce Warrell that Bob Bickford was not in. She called again several times on January 29 and was unable to reach Bickford. According to Bailey she finally reached Bickford on January 30 and he told her that he hadn't yet

[7] In May 1992, the Company by Edward LeClerc sent letters to some of the laid-off North Stonington drivers advising them that the Company was prepared to offer them reinstatement or the opportunity to train for the CDL. I am not certain from this record as to whether such letters were sent to all or just a few of the North Stonington drivers who were laid off in June 1991.

[8] Although there was no formal pregnancy leave policy, the evidence does indicate that there was a de facto practice of rehiring employees when they were ready to return after giving birth.

gone over the applications and that he was not sure he was going to.

Bailey testified that about a week later (early February 1992) she spoke with Bickford who admitted that the Company had started training a couple of people who had been obtained from the advertisements that had been run earlier. (This must refer to Diane Joseph, Paul Desy, and Sue Cozzolino, all of whom were untrained and unlicensed people.)

In the meantime, Marian Oates, who filed the decertification petition, told Bob Bickford that she would quit if Lori Bailey was rehired. This according to Bickford, occurred in January or February 1992. In this regard, Lori Bailey testified that when she spoke with Bickford in February, she asked if she was not being taken back because of the Union and because of Marion Oates. Bailey states that when Bickford initially denied these accusations, she said that another driver had overheard Oates telling Bickford that she (Oates) was ''busting her ass to get the Union out and you're hiring union people, especially Lori Bailey.'' She testified that Bickford replied that this person had big ears and she responded; ''Yes big enough to overhear this conversation.''

On May 29, 1992, LeClerc sent a letter to Lori Bailey as follows:

> I understand you may be interested in rejoining Laidlaw . . . at our Stonington facility. If so, please be advised we are prepared to offer you reinstatement, or the opportunity to train from your CDL if you do not currently possess this required license.
>
> Assuming you remain interested, kindly complete the enclosed Application and return it to me . . . . You will then be considered for the first available opening, or I will arrange for you to participate in our next CDL training program.

On May 30, 1992, Lori Bailey wrote to LeClerc as follows:

> The Stonington Facility has a record of an updated application dated on January 9, 1989 when I first came to them to return to work after my pregnancy. I do carry a RI (Rhode Island) CDL license along with a CT (Connecticut) Public Service License Class A which needs to be upgraded to Class C with a ''late proficiency.'' This would need to be done by June 30, 1992. I know next week is the 1st of June and the close of school is soon to follow. I would like to return to work as soon as possible and would be able to work for the summer . . . .

After some problems arranging for her test, Lori Bailey got her proficiency and license in early June 1992. On July 9, 1992, she finally was offered work which was a charter run for 5 weeks during the summer.

Bob Bickford and Nancy Hartley contended that they initially decided not to rehire Lori Bailey because when she worked during 1990, she had a problem controlling her child on the bus. This was denied by Bailey and in any event seems like a specious argument considering that there was absolutely no evidence that she had any problems in doing her job at that time. As noted above, Lori Bailey was finally offered a job in July 1992 and this resulted from LeClerc's decision, after an unfair labor practice charge was filed, to overrule Bickford.

Like the North Stonington drivers who were discriminated against, Lori Bailey was more qualified than any of the new people who replied to the help wanted ads that the Company had placed in January 1992. She needed only a limited amount of training in order to update her license as opposed to the 35 to 37 hours required for each of the new people before they could begin to work. In my opinion, the Company refused to rehire Lori Bailey until after the school year ended, because it wished to curry favor with Marion Oates who was trying to get rid of the Union and because both Oates and the Company did not want Jane Bailey's daughter to come back and lend her support for the Union.

F. *Doreen Aymelek*

The General Counsel makes two allegations regarding Aymelek: (1) That she was discriminated in the summer of 1991 when a summer run to which she was entitled to by seniority was taken away from her and given to Regina Martin. (2) That Aymelek was discriminatorily discharged on October 13, 1991, soon after the start of the new school year. The Respondent denies that it took either action because of union considerations and asserts that in both cases, it acted because Aymelek was not doing her job right.

Doreen Aymelek began as a driver working for Beebee's in 1986. She worked at the Stonington terminal and until September 9, 1991, had nothing in her personnel file indicating that she had any problems with her work. She was not one of the three main union activists, but according to her own testimony and the testimony of Jane Bailey, she was among a group of employees who were outspoken in favor of the Union. I note parenthetically that although Aymelek's demeanor as a witness tended to give the impression of a shy and vulnerable person, my opinion, from the entire record, was that she was capable of and more than willing to uphold her end of an argument.

This brings us to Regina Martin who began working at the Stonington terminal as a driver on October 3, 1990. (She, along with Karen Simmons, were, in the 1991–1992 season, the drivers with the least seniority at Stonington.) The evidence indicates that she was one of the few drivers who opposed the Union during the initial election campaign. (She put a ''vote no'' button on her child who rode on the bus with her.) In the autumn of 1990, Martin complained that the Union had vandalized her car and she was transferred, at her own request, to the North Stonington location where she was given a regular run. (The Company asserts that although given a regular run at North Stonington, Martin remained on the Stonington seniority list as a spare driver.)

At the end of each school year, many of the drivers opt to be laid off for the summer and they collect unemployment insurance benefits. A minority of the others bid for summer runs that the Company obtains. The summer runs are given out in order of seniority to those employees who make bids.

At the end of the 1990–1991 school year, Aymelek was the most senior driver who bid for a summer charter run which involved transporting Navy personnel between Electric Boat at Groton Connecticut and Quannsett Point in Rhode Island. This run was to be done on Mondays to Fridays and involved a run from Groton in the morning and a return trip from Quannsett Point in the afternoon. Initially, Regina Mar-

tin started to do this run and after Aymelek complained that she was more senior than Martin, she was given the afternoon run.

At some point in the summer, Regina Martin began reporting to Nancy Hartley that the Navy personnel were complaining to her that Aymelek was driving all over the road; that on one occasion she went the wrong way on Interstate 95; that she was flirting with the men; and that on at least one occasion she had taken a sailor home with her. Martin told Hartley that the Navy men wanted Aymelek removed from the run. Hartley testified that she told Martin that in order for the Company to do anything, it would have to receive a formal complaint from the Navy. Hartley testified that she then received a phone call from a Lt. Ferigno who registered complaints about Aymelek's driving. She testified that based on this complaint, she removed Aymelek from the run in early July 1991. Needless to say, Regina Martin picked up most of that work.

Simultaneously with the above, Aymelek began receiving calls from Regina Martin's husband who accused her of spreading rumors about his wife's sexual conduct. (Martin did not testify in this case.)

After being removed from the Navy run, Doreen Aymelek called up various officials of the Navy and was told, in substance, that Lt. Ferigno neither had the authority nor was it in accordance with standard procedure for him to ask Laidlaw to replace a driver on a bus run.

No Navy people were called by either side to support or contradict the contentions made that Aymelek was allegedly engaged in misconduct and dangerous driving. I also note that despite the allegations made against her, Aymelek was not given any warnings about the alleged incidents. (One would imagine that a warning would be in order if a driver was found to be driving down the wrong side of an interstate highway.) Indeed this entire transaction strikes me as being very odd.

There is no question but that the removal of Doreen Aymelek was precipitated by the tales (perhaps tall tales) that Regina Martin told about her to Nancy Hartley. The issue here is whether the Company was motivated by union considerations or whether it became embroiled in a personal dispute between these two women who were tossing around sexual innuendos about each other.

While the situation regarding the summer run seems to me to be ambiguous, I think on balance that the Company was motivated in part, by union considerations. That is, I think that the evidence suggests that Nancy Hartley acted on Martin's reports either because Aymelek was one of the employees who openly supported the Union or because she wished to reward Martin who was an outspoken opponent of the Union. In either case, as I am inclined to believe that union considerations played a role in the decision to remove Aymelek from the summer Navy run, and as I am not persuaded by the Respondent's evidence purporting to show that it was motivated by legitimate business reasons, I conclude that the Respondent violated Section 8(a)(1) and (3) in this regard.

The circumstances leading up to the discharge of Doreen Aymelek are to my mind somewhat confusing. As best as I can make out, the events were as follows.

In the 1990–1991 school year, Aymelek drove a route which involved picking up and dropping off children in and around Quacachaug Hill in Old Mystic. In the past, drivers were instructed not to use that hill, as its steep grade made it dangerous, particularly when a bus stopped to pick up or let off children. At the drivers' meeting however held in August 1991, the drivers were told by Nancy Hartley that the school board had given permission to use Quacachaug Hill.

Aymelek's run, at the beginning of the school year, included picking up the two Selinger children who lived on Quacachaug Hill. This required Aymelek to stop the bus on the hill.

Early in the school year, the Company took a kindergarten run away from Aymelek. In this regard, Joyce Warrell testified that she received a report from Regina Martin's husband to the effect that he had seen Aymelek weaving all over the road and that he didn't want his son on her bus. (Somehow I am not surprised that the person who reported this type of driving by Aymelek was Regina Martin's husband.) Warrell states that she went out to observe Aymelek and confirmed that she did weave on the road because she drank coffee with one hand and drove with the other. Nevertheless, no warning was issued to Aymelek regarding what I would consider to be dangerous driving if true.[9]

When Aymelek, at the start of the school year, began doing her run, she complained to Nancy Hartley that the change in her run (from the previous year) was slowing her down and making her late. When she suggested that some children on her bus be reassigned to other buses, Hartley refused. Aymelek states that she also suggested that the Selinger children be picked up by van as in previous years. In contrast, Hartley did remove some of the children from Valerie Cline-Collins run when she complained. (As noted above, Valerie Cline-Collins had expressed antiunion sentiments.)

On September 6, 1991, Aymelek had an incident with a child named Ashley wherein she scolded Ashley for not following safety procedures while getting off the bus. Also on September 6, a woman who was a neighbor of Ashley's mother, reported to the Company that Aymelek was going 50 m.p.h. in a 30-m.p.h. zone.

On the morning of September 9, 1991, Ashley's mother, Julia Ray, vehemently upbraided Aymelek for yelling at her child and Aymelek radioed Nancy Hartley that she should expect a call from an irate mother. It also appears that on that day, Ashley's mother made a complaint to the Company which alleged that Aymelek was constantly yelling at her child and that she went 35 m.p.h. in a 15-m.p.h. zone.

According to Aymelek, on the afternoon of September 9, 1991, she was told by Hartley that some people had reported that she had been speeding. She states that she denied this. Nevertheless, on that date, Aymelek received a warning about the alleged speeding which she refused to sign. According to Aymelek, on September 10, 1991, she was told by Hartley that the the speeding incidents had been investigated and that ''everything was fine.''

Also on September 9, 1991, Aymelek testified that she received instructions from Hartley to leave the Selinger children off at the top of the hill and not by their house. She

[9] For this reason, I am inclined not to credit Warrell's assertion that she observed Aymelek weaving all over the road. I am also not inclined to credit her assertion that Aymelek expressed antiunion opinions to her.

states that she told Hartley that this too was not safe. In any event, Aymelek's run was revised so that she did not have to go up or down Quacachaug Hill.

With respect to Quacachaug Hill, Nancy Hartley testified that on the second day of school, she received a phone call from Joan Dufton of the school board who told her that the hill should no longer be used because the parents were complaining. Hartley states that she told the drivers involved (such as Aymelek, Henson, Arnat, and Simmons) that they no longer should use the hill. Respondent's Exhibit 11, which Hartley described as a description of the revised run, is dated September 11, 1991. Although it may make no difference, she claims that she gave Aymelek an earlier draft of this document at some point before September 11. In any event, it seems that by September 11, Aymelek had been notified not to use Quacachaug Hill.

On September 10 and 11, 1991, the Selinger children did not use Aymelek's bus. Also on or about September 11, a few of the mothers gave letters to Aymelek which are in the nature of testimonials. Aymelek testified that this came about when Nancy Hackett, the director of a child care center, told her that she had heard that Aymelek was having problems with Ashley's mother and that she (Hackett) would solicit character references for Aymelek from other mothers).

On September 12, 1991, Aymelek met, pursuant to her request, with Bob Bickford in what appears to have been an effort by her to clear the air. According to Aymelek, she related her problems with the Navy run, the speeding charges, etc. She states that she discussed the personality of everyone at the terminal and that she said that there was a lot of hate and tension because of unfair treatment which she claimed was the reason for the employees going to the Union. Aymelek testified that she told Bickford that Regina Martin was spreading false rumors about her and that she showed him the letters from the parents that she had just received. According to Aymelek, Bickford did not say much although he did indicate, at one point, that he was worried about her driving. She states that when she asked him to clarify, he refused. She also states that he mentioned that he had seen her downtown on Granite Street and that she told him that she was there to go to a union meeting. According to Aymelek, Bickford told her at the conclusion of the meeting that he felt that she was a safe and conscientious driver and that she didn't have anything to worry about.

Bickford testified that at this meeting, Aymelek mentioned various of her problems and showed him a group of letters. He states that he reprimanded Aymelek for soliciting such letters and that she denied soliciting them. In this regard, Bickford testified that prior to this meeting, he had received a phone call from Joan Dufton who stated that she wanted him to get rid of Aymelek. He states that Dufton told him that Aymelek was speeding, that she had almost hit a child, and that she was most angered by the soliciting of letters by Aymelek. (Frankly I have difficulty with this ordering of priorities.) Joan Dufton was not called as a witness.

According to Aymelek, on the afternoon of Friday, September 13, the Selinger children got onto her bus to go home from school. She testified that when she asked them why they were on her bus, they said that they were told to go on bus 15 and that they got upset. According to Aymelek, she radioed to base and spoke to Hartley who told her to take them home. She states that she asked Hartley which way she should take them and that Hartley responded by saying to take them home the ''old way.'' Aymelek testified that she took this to mean that she should use Quacachaug Hill as this was the route at the start of the school year. She states that when she dropped them off, a woman approached her and said that she was breaking the law by having the bus on the hill. Aymelek testified that she told this woman (whose name she didn't know, but appears to be a Jo Ann Morris), that she was just following orders and that she should call the office. At the same time, Aymelek radioed to Nancy Hartley to tell her to expect a phone call from this woman about using the hill.

According to Aymelek, when she got back to the terminal, Nancy Hartley exploded and told her that she was fired. Aymelek testified that when she asked why, Hartley said because she was told not to use the hill. Aymelek asserts that she responded that it was Hartley who dispatched her to the hill. According to Aymelek, Hartley told her that she was fired for insubordination.

According to Nancy Hartley, on September 13, she got a call from a lady who reported that the bus was on the hill. (This probably was Joan Dufton because Morris apparently reported the incident to the school board on that day.) Hartley testified that when she then reported this to Bob Bickford, he said that he was upset that Doreen Aymelek was soliciting letters. According to Hartley, she told Aymelek that she was fired because she failed to follow direct orders. She testified that the key thing was driving on the hill, but that the other incidents were part of the decision.

Joyce Warrell, who was present at the terminal on September 13, testified that the thing that precipitated Aymelek's discharge was a phone call received that day from Joan Dufton regarding Aymelek's use of the hill.

Bob Bickford testified that he made the decision to discharge Aymelek after Nancy Hartley called him up and told him that Doreen Aymelek had used the hill. He states that he made this decision and instructed Hartley to fire Aymelek after having earlier received a phone call from Joan Dufton asking him to get rid of Aymelek (mainly because she had solicited parent letters).

While everyone seems to agree that the incident on the hill precipitated Aymelek's discharge, the question remains as to whether it was the real reason for her discharge. On one hand, we have the Company asserting that Aymelek used the hill despite being directed not to. On the other hand, Aymelek testified that she reasonably concluded that she was to use the hill when she asked Hartley on September 13 how she was to take the Selinger children home and was told to go ''the old way.'' Additionally, the Company insists that Joan Dufton, as a representative of the school board, specifically requested that Doreen Aymelek be fired; this request being made either on September 13 or a few days earlier.

Bickford called up Joan Dufton *after* Aymelek had been discharged and requested that Dufton send him a letter confirming that she had asked for the discharge of Doreen Aymelek. Dufton's letter, dated September 18, 1991, states:

> This letter is to express concern over the complaints I have received from parents about your driver, Doreen Aymelek.

> During the first week of school, there were numerous telephone calls and incident reports filed on Ms. Aymelek with the school department.
>
> Among these complaints were: excessive speed, abusive to children, abusive to parents, chronically late, erratic time at bus stops, [and] requested students to ask parents to write letters on her behalf.
>
> I would appreciate notification about how you are handling this situation.

While listing a variety of complaints, Joan Dufton's letter did *not* state that she had asked for the discharge of Aymelek. Also noteworthy is that it did *not* make any mention of the incident on Quacachaug Hill which precipitated Aymelek's discharge.

Notwithstanding a bit of contrary testimony by Joyce Warrell, I conclude that Doreen Aymelek, although not one of the Union's key supporters, had openly expressed her opinion favorable to the Union. There also is ample evidence to show that she was involved in an intense and personnel dispute with Regina Martin who happened to be one of the key people opposed to the Union. As indicated above, a violation of Section 8(a)(3) would, in my opinion, be made out if the Company's discharge of Aymelek was either because of her support for the Union or alternatively if it was motivated by a desire to accommodate Martin *because* of the latter's support for the Union's opposition.

There is no doubt that the 1991–1992 school year started off badly for Doreen Aymelek and got worse. Whether or not she was at fault, it is undisputed that she incurred the anger of at least one mother who brought her complaints to the school board and the Company. There is also no dispute that she was on Quacachaug Hill on September 13, albeit I am inclined to believe that this was the result of a misunderstanding on her part and not because of any deliberate insubordination.

There also is no dispute that prior to September 9, 1991, Aymelek had never received any warnings or any other disciplinary actions. (The Company's drivers' manual sets forth a progressive disciplinary procedure.) Moreover there was documentary evidence relating to an employee named Jody Root, showing that the Company, in the past, had issued a great many warnings and suspensions before resorting to discharge.

Finally there is, in my opinion, a discordance between Warrell, Hartley, and Bickford regarding the reason that Aymelek was discharged. By the testimony of Warrell and Hartley it was Aymelek's driving on the hill that was the cause of her discharge. According to the testimony of Bickford, the reason was that Joan Dufton asked for Aymelek's discharge mainly because she had solicited letters; the incident on the hill merely being the trigger that prompted him to tell Hartley to fire Aymelek.

In my opinion, the question here is extremely close. Applying the principles of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), however, I conclude that the Company's discharge of Doreen Aymelek violated Section 8(a)(1) and (3) of the Act.

G. *Medical Insurance*

The Company offered a medical plan to its employees which, however, was noncontributory. That is, the employees bear the entire cost of the premiums and the Company, apart from arranging for a group rate, make no monetary contribution to the plan. It was stipulated that in September 1991 the monthly medical insurance premiums for the bargaining unit employees was increased. The increases were from $135 to $150 for single coverage; $200 to $230 for employees with one dependent; $215 to $280 for an employee with a spouse; and $320 to $390 for family coverage. There is no dispute that the Company did not notify the Union ahead of time before instituting these changes.

An employer having a collective-bargaining relationship with a union must first notify and offer to bargain with that union before making any unilateral changes in the terms and conditions of employment. *Gulf States Mfg. v. NLRB*, 704 F.2d 1390 (5th Cir. 1983). That rule applies to changes in medical insurance benefits. *Intermountain Rural Electric Assn.*, 305 NLRB 783 (1991).

Nevertheless, the question here is whether the action of the Company in increasing the medical insurance costs constituted a unilateral change.

The evidence shows that the Company's past practice has been to pass the full amount of any increased medical insurance costs along to its employees because the Company does not make any contributions of its own. Therefore, the announcement in September 1991 that the premiums were being increased did not, in my opinion, reflect any change in employee benefits and this case is unlike the facts of *Intermountain Rural Electric Assn.*, supra, and the other cases cited by the General Counsel.[10] In those cases, the respective companies paid all or part of the health insurance premiums and therefore the medical benefits were part of the direct compensation paid to their employees. As such, when those companies either changed insurance carriers and/or required the employees to shoulder a greater portion of the plans' respective costs, there clearly was a change in their employees' overall compensation packages which required negotiations before being unilaterally changed.

This is not really the case in the present situation because the particular medical plan offered by Laidlaw never had any portion paid for by the Employer which merely facilitated the ability of the employees to buy for themselves medical insurance at a group rate. In the past, when costs for coverage went up, the employees paid the entire bill. In September 1991 when the costs went up, there was no change; the employees again paid the entire bill.

It also is alleged that the Respondent in September 1991 violated the Act by refusing to allow Cathy Toth to enroll in the Company's medical plan.

Cathy Toth testified that in August 1991 she spoke with Nancy Hartley about going into the Company's medical plan

[10] The cases cited by the General Counsel were *Gentzler Tool & Die Corp.*, 268 NLRB 376 (1983); *European Parts Exchange*, 270 NLRB 1244 (1984), and *Pak-Mor Mfg. Co*. 241 NLRB 801 (1979). See also *Circuit-Wise, Inc*., 306 NLRB 766 (1992), where I found that a company violated Sec. 8(a)(5) by unilaterally increasing that portion of the contributions which the employees paid for a self-insured medical plan to which the company contributed a major portion of the costs of the benefits provided.

because her husband was laid off from his job through which the family had its medical insurance coverage. She asserts that when she asked about the plan, Nancy Hartley told her that the Company was going to get a new and cheaper plan. According to Toth she told Hartley that she needed the information soon because she understood that the open period for entering the plan closed at the end of September. Toth states that during September 1991 she asked Hartley and Joyce Warrell on several occasions about getting the forms to fill out but that they ignored her. She testified that at the end of September 1991, she told Joyce Warrell that there were only a few more days to sign up for the insurance and that she needed the forms to do so. According to Toth, Joyce Warrell's daughter (who was a driver) turned around and said, ''You're going out on strike, why should they give you anything.''

According to Joyce Warrell, Cathy Toth asked about insurance soon after the school year began, explaining that her husband had lost his job. She states that she thereupon showed Toth the existing Laidlaw plan described above. Warrell asserts that Toth said that she was not interested in the existing plan because the rates were too high and she heard that there were increases every year. Warrell states that Toth later asked if there was not some other plan that she could join and that she (Warrell) said that she would get back to her. According to Warrell, she told Toth that the only plan available was the existing plan[11] albeit the Company was working on an alternative plan which was not going to be ready for the foreseeable future. Warrell testified that later in September 1991, she asked Toth if she wanted to enroll in the Laidlaw plan and Toth refused, stating that her husband had gotten new insurance through a new job that he had obtained. (This was not rebutted by Cathy Toth.) Warrell also denied that her daughter ever made the remarks attributed to her by Toth. Kim Warrell was not called as a witness.

I am not persuaded that the evidence is sufficient to prove these allegations made by Cathy Toth. The testimony of Toth and Warrell was directly contradictory and each was without independent corroboration. I however was influenced by the testimony of Warrell, unrebutted by Toth, that Toth, after making inquiries about the Company's plan and the possibility of a new plan, ultimately rejected the Company's existing medical plan because her husband had gotten a new job which carried family health insurance with it.

H. *Denial of Wage Increase*

The evidence establishes that at the August 1991 drivers' meeting, the Stonington employees were told that there would be no wage increase that year. The General Counsel's witnesses credibly testified that Ted Hutcheson said at the meeting that the reason there was to be no wage increase was because wages were part of the negotiations between the Company and the Union.

There had been annual wages increases given to the Stonington and North Stonington employees, in varying amounts, at the beginning of each school year that Laidlaw operated these facilities from 1986 through 1990. Also, the evidence shows that in September 1991, wage increases were granted to the employees of the other terminals operated by Laidlaw in the central Connecticut district to the extent that their wages were not governed by collective-bargaining agreements. Finally, the evidence establishes that the Union was not notified, at any time prior to the announcement, that the Company intended not to give wage increases to the bargaining unit employees.

With respect to the 1991–1992 season, Edward LeClerc testified that in March 1991, he recommended to Vice President Bob Pudewski, that a 4-percent across-the-board pay increase be granted to all employees in the various eastern Connecticut terminals under his supervision including the terminal at Stonington.[12] He testified that he made this recommendation to Pudewski despite the fact that he knew that the Company was likely to lose the North Stonington contract which he described as marginally profitable and which he asserts had an impact on that division's earnings. He, however, could not say with certainty whether the North Stonington operation was making or losing money under its existing contract. If it was losing money as testified to by Jane Bailey, one would expect that the termination of that operation would help the division's financial situation in the aggregate.

According to LeClerc, his recommended pay increase for the Stonington employees was rejected by Pudewski because the revenues of that particular division, in contrast to the other divisions in the district (such as Madison) were deteriorating. He testified that he was told to revise the budget and he did so by recommending that wages be frozen at the Stonington (and only the Stonington) terminal. Pudewski did not testify in this case, and no other evidence was presented to support the assertion that the Stonington operation was financially at risk or that it differed in any particular respect from the other Connecticut terminals where annual raises were given.

In my opinion, the evidence establishes that the Respondent, since it took over the Stonington/North Stonington operation from Beebee's had established and maintained a practice of giving annual wage increases to its employees. This is not to say that there was an established practice to grant any particular amounts; that determination being made on a year-to-year basis depending on various circumstances.

Having established a prior practice of granting annual wages increases, it seems to me that the Company was not free to unilaterally change its practice without first notifying the Union and giving it an opportunity to bargain about the withholding of the 1991–1992 wage increase. Not having done so, for whatever reason, constitutes a violation of Section 8(a)(1) and (5) of the Act. *Louisiana-Pacific Corp*., 299 NLRB 16 fn. 3 (1990).

Moreover, I am of the opinion that the real reason that the Company withheld this increase was not because of financial considerations but rather because it was engaged in negotiations with the Union and did not want to give anything to anyone until negotiations were either completed or until the Union was voted out. In this respect, I conclude that the withholding of these wage increases was discriminatorily

[11] The parties agreed that no new plan was offered to employees during 1991.

[12] According to LeClerc, the wages of the drivers in New Haven were governed by a labor contract and therefore the wage increase recommendation was not applicable to them.

motivated and therefore violative of Section 8(a)(1) and (3) of the Act as well. *Louisiana-Pacific Corp*., supra.

I. *Alleged Change in Charter Assignments*

This allegation is not related to the allegation described above in section C, where the Company, on October 29, 1991, explicitly changed the charter system and then withdrew the changes after Jane Bailey complained. Instead, we are dealing with an allegation regarding some events that took place in February 1992.

In addition to regular school runs, the Company charters its buses to whoever wants to use them. For example, many of the charters consist of taking students to athletic or cultural events. As a general rule, when charters are received, they are posted on Monday for the week and the employees can bid on them by writing their names on notices announcing each charter. (Each charter run is posted separately.) Charters that came in during the week were posted, if possible, on the day before the run and, if not possible, a description of the charter was radioed to the drivers while on the road. If drivers were interested, they would put their names on the paper announcing the particular charters that they desired, and the driver with the highest seniority would get the run. This would be signified when Nancy Hartley put a circle around the winning driver's name.

Basically the General Counsel's contention is that since February 1992, Nancy Hartley, began circling the names of the winning drivers at around noon instead of her previous practice of doing this at 4 or 4:30 p.m. (Regina Martin confirmed that this was a change in the past practice.) It is contended that this alleged change in procedure disadvantaged some of the drivers who might not have been able to get their bids in until the afternoon. There was testimony that in a few instances Marion Oates had her name circled before other drivers made their bids. The evidence, however, also shows that in each instance, the driver with greater seniority than Oates obtained the run when it was brought to the attention of Hartley.

There was no official notice of this alleged change to the employees and no notification was given to the Union.

It seems to me that the evidence supports the contention that there indeed was a change in the policy of awarding charters when Nancy Hartley began circling the winning driver at noon instead of later in the afternoon. I can see how this might affect drivers who might be on the road or not around when the charters are usually posted in the morning. For example, if a driver was not present at the terminal on a Tuesday morning or already out on the road when a charter was received and posted, she might not get an opportunity to bid on the charter if it was assigned before she returned to the terminal in the afternoon.

As this change was unilaterally made without notification to the Union, it is concluded that the Respondent has violated Section 8(a)(1) and (5) of the Act in this respect.[13]

J. *The Warnings to Jane Bailey and Cindy Greene*

On April 15, 1992, Cindy Greene and Jane Bailey were assigned to do a charter trip from the Mystic Middle School to the Peabody Museum in New Haven Connecticut. Before embarking on the charter, they each did their first morning runs. The charter left at 8 a.m. and was scheduled to return at 3:30 p.m. This meant that both Greene and Bailey would not be able to do certain of their normal afternoon runs, which had to be covered by other drivers.

Having seen enough at the museum, the children and the teachers decided to return a little early. Consequently, Greene and Bailey returned to the school at about 2:15 to 2:20 p.m. According to Greene, when the got to the New London bridge, they heard Joyce Warrell say over the radio, ''if you're looking for run 8, it's on its way.'' This refers to Jane Bailey's bus and Warrell's comment could be construed as meaning that Warrell had been notified that Jane Bailey's charter was returning early and that she would be available to do her regular afternoon run from Mystic Middle School.

On arrival at Mystic Middle School, Regina Martin was at the school in her bus. When Bailey and Greene decided to return to the base, on the assumption that their early afternoon runs from Mystic Middle School were covered, Regina Martin asked over the radio where they were going. Greene asked Martin why she was asking, and Martin testified that she asked this question basically to stir up a little trouble. Martin also testified that Sharon Fish was already at the school in order to cover for Bailey. Greene and Bailey then proceeded to the terminal and according to Bailey, she received a radio transmission from Warrell asking where she was. Bailey states that she told Warrell that she was on her way back to base and that Warrell did not make any response or indicate that she was supposed to be at Mystic Middle to make her afternoon run from that school. Later in the afternoon, both Greene and Bailey went out and did all of the remainder of their afternoon runs. (That is, the only run that each did not do was the afternoon run from the Mystic Middle School and that run was scheduled to take place during the time that these two drivers were originally scheduled to be out on the Peabody Museum charter run.)

In the following week, Greene and Bailey received warnings which originally stated that they ''should have called in on radio from school after drop off,'' that they ''refused to answer a call from base,'' and that ''after returning to base at 2:30 p.m., they did not do their p.m. runs.'' Greene and Bailey refused to sign these warnings and told Warrell that the assertions were not true. (In fact, the warnings were later modified to indicate that the only run that either did not do, was from the afternoon Mystic Middle School run.)

Warrell testified that on April 15, 1992, she received word from the Mystic Middle School that the Peabody run was coming back early and that she was told by Nancy Hartley to have Greene and Bailey do their normal afternoon runs. Warrell states that she radioed to these two drivers but received no answer. She also states that she heard from Regina Martin that Bailey and Greene were on Flander's Road. In essence, her rationale for issuing these warnings appears to be that when she tried to reach Bailey and Greene in order to have them do their regular run from Mystic Middle, they did not respond.

Although Warrell asserted that she attempted to reach Bailey and Greene over the radio, this was not corroborated by an other witness. In fact, Regina Martin, who is no friend of the Union, testified that she did not hear Warrell call ei-

[13] Having concluded that the Company violated Sec. 8(a)(1) and (5) of the Act in relation to this change, it is not necessary to conclude that the action also violated Sec. 8(a)(3).

ther driver over the radio. Moreover, Martin testified that Bailey's run from Mystic Middle was covered by Sharon Fish. Martin further testified that if it had been her, she too would have gone back to the base before doing the later afternoon runs.

I believe that Bailey and Greene were not contacted by Warrell to do the Mystic Middle School afternoon run and that they returned to base with the reasonable expectation that this run had been covered. (Also, contrary to the warnings as originally worded, they both did all of the rest of their afternoon runs.) In my opinion, there was nothing that either Bailey or Greene did which was incorrect or insubordinate. As it is concluded that the warnings issued to them were unjustified, I conclude, in light of the evidence of antiunion animus, that these warnings were discriminatorily motivated and violative of Section 8(a)(1) and (3) of the Act.

K. *Alleged Refusal to Give Jane Bailey Training Work*

According to Jane Bailey when she gave up her position as STP supervisor she was assured by management that she would be given the opportunity to train employees as needed. There is a premium paid to an employee while engaged in training.

There was testimony that during the summer of 1991, Cathy Toth requested training in order to pass the new exam and that she was put off until shortly before the school year started. The inference here is that if Joyce Warrell was not available to train Cathy Toth, the Company should have assigned that task to Jane Bailey.

In my opinion, the evidence as a whole, does not convince me that Jane Bailey was denied training work. Although there were a number of new people who needed to be trained and older employees who needed to be prepared for their proficiency tests, there is no evidence that Joyce Warrell did not accomplish this work by herself or that the Company used anyone else for training purposes.

CONCLUSIONS OF LAW

1. By taking away the summer Navy run from Doreen Aymelek and by discharging her on October 13, 1991, the Respondent has violated Section 8(a)(1) and (3) of the Act.
2. By withholding annual wage increases to employees in September 1991, the Respondent violated Section 8(a)(1), (3), and (5) of the Act.
3. By refusing to recall or rehire, or by delaying the recall or rehire of, employees who were laid off at North Stonington in June 1991, the Respondent has violated Section 8(a)(1) and (3) of the Act.
4. By delaying in the recall or rehire of Lori Bailey, the Respondent has violated Section 8(a)(1) and (3) of the Act.
5. By soliciting employee grievances and by attempting to bypass the Union by dealing directly with the employees, the Respondent has violated Section 8(a)(1) and (5) of the Act.
6. By withdrawing a contract offer on its acceptance by the Union, the Respondent bargained in bad faith and violated Section 8(a)(1) and (5) of the Act.
7. By issuing disciplinary warnings to Jane Bailey and Cindy Greene in April 1992, the Respondent violated Section 8(a)(1) and (3) of the Act.
8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

It is obvious that during the 1991–1992 school year, there were not enough positions to accommodate all of the laid-off North Stonington drivers, even taking into account the hiring of new drivers such as Henson, Eastty, Joseph, Desy, and Cozzolino, and the greater utilization of mechanics, supervisors, and drivers from other terminals to do the work. It therefore is recommended that any such North Stonington driver who has not already been offered employment be offered a job at the Stonington terminal if a position is available (terminating if necessary any new drivers employed since June 1991) and, if no position is available, offering to place them on a preferential hiring list.

It is also recommended that backpay be granted to Donna Mayne whose delay in being recalled was found here to be discriminatorily motivated. That is, backpay for her should run from the beginning of the 1991–1992 school year until the time that she was offered employment in 1992.

As to the other North Stonington drivers, I shall leave for compliance any issues as to which employees should be entitled to backpay on account of the Company's failure to offer them employment and the amounts of money, if any, that they would be owed.

Backpay is also recommended for Lori Bailey for the period from January 9, 1991, when she asked to go back to work until July 1991 when employment was offered to her.

As to Doreen Aymelek, I have concluded that she was discriminatorily taken off a summer run and was subsequently discharged for unlawful reasons on October 13, 1991. Therefore, it is recommended that the Respondent offer her reinstatement to her former job and make her whole for any loss of earnings and other benefits resulting from the illegal actions against her.

Insofar as the wage increase, it is recommended that the Respondent make whole the employees here for the increases which I have found were illegally withheld. In computing the amounts, it is my opinion that the raises granted to the Stonington employees should be the same as the amounts given to those employees located at the other terminals in the eastern Connecticut district where wages are not regulated by a collective-bargaining agreement.

In all instances where monetary relief is recommended, the amounts should be computed on a quarterly basis as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The General Counsel contends and I agree that the remedy should also extend the certification year by 6 months. As it is my conclusion that the Respondent undermined the bargaining by its actions, I think that the Union should have a reasonable length of time to bargain in good faith. See for example *Colfor, Inc*., 282 NLRB 1173 (1987), where the Board ordered a 6-month extension of the certification year.[14]

[Recommended Order omitted from publication.]

[14] As noted in *Colfor, Inc*., supra at 1175, the Respondent's obligation to bargain will not stop when the certification year expires. The Employer would be required to continue bargaining after the period expires unless the Employer can establish, ''(1) that at the time of the refusal to bargain the union in fact no longer enjoys a majority representative status; or (2) the employer's refusal to bargain was predicated on a good-faith and reasonably grounded doubt of the union's continued majority status.''